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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/618,166	07/10/2003	Randall Eric Swanson	2295-004	4355
20575 7590 09/13/2007 MARGER JOHNSON & MCCOLLOM, P.C. 210 SW MORRISON STREET, SUITE 400 PORTLAND, OR 97204				
EXAMINER				
ZIRKER, DANIEL R				
ART UNIT		PAPER NUMBER		
1771				
MAIL DATE		DELIVERY MODE		
09/13/2007		PAPER		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

### Office Action Summary

**Application No.**

10/618,166

**Applicant(s)**

SWANSON, RANDALL ERIC

**Examiner**

Daniel Zirker

**Art Unit**

1771

**Period for Reply** -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 19 July 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-5 and 18-32 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 1-5, 24 and 26-32 is/are allowed.
- 6) ☒ Claim(s) 18 is/are rejected.
- 7) ☒ Claim(s) 19-23, 25 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB-08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

1. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.
2. Claim 18 is rejected under 35 U.S.C. 102(b) as being anticipated by Owens et al, substantially for the reasons set forth in Paragraph No. 4 of Paper No. 20070626, together with the following additional observations. More particularly, applicant argues (Response, pages 6-7, bridging paragraph) that the reference teaches a patch structure which is made up of multiple layers of different materials and that has an exposed surface of the resulting patch sheet which is "slightly convex", thereby (it is implied) not being an anticipation of the claim structure which requires "a flexible sheet having a substantially uniform thickness". However, note that Col 3, lines 9-20 teach a genus of patches which while not being "the preferred embodiment" nevertheless teach patch embodiments which include the presence of polyester sheets 13 and 14 which sandwich a "tough plastic sheet", with the resulting structure(s) believed to form the claimed flexible sheet(s) that do not have to be slightly convex, i.e. the sheet has a substantially uniform thickness, and which as also pointed out previously can have an adhesive layer applied to a lower surface of the sheet, together with a ready to paint upper surface. Such a wall patch structure is believed to anticipate claim 18.
3. The remaining rejections of record have been withdrawn for reasons both stated by applicant, as well as for the following additional observations. The provided Terminal Disclaimer overcomes the provisional nonstatutory obviousness-type double patenting rejection of record, and the Second Supplemental Brower declaration overcomes the 102(b) on sale (etc.) bar rejection of record inasmuch as it is possible to eliminate such

an issue in this ex parte proceeding. Finally, the prior art 103(a) rejections based upon Owens et al taken either individually or in view of either applicants' admissions, or alternatively in view of Swallow, as well as Owens et al again taken either individually, or in view of Estrada have been overcome by the initial Brower Declaration which the Examiner, as also noted by applicant, believed made a convincing argument not only for commercial success, but also for solving a long felt need. As such, claims 1-5, 24 and 26-32 are allowed, while claims 19-23 and 25 are each objected to as being dependent upon a rejected base claim.

4. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Daniel Zirker whose telephone number is 571-272-1486. The examiner can normally be reached on Monday - Thursday from 8:30 to 6:00. The examiner can also be reached on alternate Fridays.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Terrel Morris, can be reached on 571-272-1478. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

/Daniel Zirker/  
Primary Examiner, Art Unit 1771